

CHAPTER 1 DISABILITY COMPENSATION

100 GENERAL PROVISION

- 100.1 The provisions of this chapter are promulgated to implement Title 23, Disability Compensation of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139).

101 FORMS

- 101.1 Any notices, claims, requests, applications or certificates that the Act or this chapter requires to be made shall be on approved forms.
- 101.2 All approved forms shall be obtained from the Division.
- 101.3 All forms shall be initially completed by the Division. Information required to complete the form in question shall be supplied by writing or telephone to the Division. The information shall be immediately entered into the data processing system of the Division. The completed form shall then be forwarded to the individual who is filing the form for review, revision, and execution.

102 REPORT OF INJURY

- 102.1 In accordance with §2320 of the Act, the official superior of any employee shall immediately report by telephone to the Division any injury which results in that employee's death or probable disability. All information requested by the Division shall be supplied by the official superior of the employee.
- 102.2 The immediate superior shall make supplemental reports and the employees shall provide additional reports and information when required by the Division and agreed upon by the head of the employing agency.
- 102.3 In accordance with §2303 of the Act, the official superior of any employee shall execute a certificate of medical expenses upon request by the Division if the employing agency accepts that the injury is properly compensable under the Act.

103 NOTICE OF INJURY OR DEATH

- 103.1 Notice of injury or death by an employee or someone on the employee's behalf shall be given to the Division by writing or by telephone within thirty (30) days of the injury or death, and all information that is required by §2319 of the Act shall be supplied within that period. The employee shall be asked whether he or she wishes to claim continuation of pay pursuant to §2318 of the Act.
- 103.2 The Division shall forward by first class mail or deliver in person the initially completed notice form to the employee or someone on the employee's behalf for review, revision, and execution. The Division shall enclose a medical release form for execution by the employee.
- 103.3 The completed form shall be returned to the Division within thirty (30) days of the injury or death or within fifteen (15) days of the date from which it was mailed or delivered to the individual giving notice, whichever is later.
- 103.4 The employee shall supply copies of the completed form to the immediate superior.

104 CONTINUATION OF PAY

- 104.1 When the Division is informed that an employee wishes to claim continuation of pay pursuant to §2318 of the Act, it shall forward by mail or delivery in person the initially completed claim forms for continuation of pay to the employee.
- 104.2 The completed form shall be forwarded by the employee to the immediate superior within five (5) days of the date upon which it was mailed or delivered to the employee.
- 104.3 Upon receipt of a claim for continuing compensation, the immediate superior shall arrange to have the employee's pay continued. Within five (5) days of receipt of the claim, the immediate superior shall forward a copy the claim to the Division.
- 104.4 Continuation of pay shall be furnished to an employee for a period of forty-five (45) days or until the Division has either upheld or denied the employee's right to continuation of pay or issued its determination upon a claim for compensation in accordance with §106.1, whichever period is first.
- 104.5 Claims for continuation of pay may be controverted by the Division in the following situations:
- (a) When the injury occurred off the employing agency's premises and the employee was not in the course of employment;

104 CONTINUATION OF PAY (Continued)

104.5 (Continued)

- (b) When the injury was caused by the employee's willful misconduct, when the employee intended to bring about the injury or death on himself or herself or another person, or when the employee's intoxication was the direct cause of the injury;
- (c) When the injury is not disabling; or
- (d) When the employee is not in active pay status, i.e., in the case of leave without pay (LWOP) or absence without official leave (AWOL);
- (e) Occupational disease or illnesses;
- (f) When the stoppage of work first occurs six (6) months or more after the date of injury; or
- (g) When the employee initially reports the injury after termination of employment.

104.6 If payments to continuation of pay have been made to a claimant whose right thereto is subsequently and finally denied, the Division shall forward to the claimant a form for the claimant to elect whether the payments made shall be charged to the claimant's sick or annual leave or shall be deemed overpayment of pay, in accordance with §2318(c) of the Act.

105 CLAIMS FOR BENEFITS

105.1 Any individual seeking benefits provided for by the Act shall file a claim with the Division within three (3) years as specified by §2322 of the Act except as follows:

- (a) When the official superior has actual knowledge within thirty (30) days of the injury or death;
- (b) Where the employee becomes aware of the relationship between the injury and his or her employment after the exercise of reasonable diligence, the time begins to run from the date of awareness;
- (c) In the case of minors, the time does not run until the minor reaches twenty-one (21) years of age or has a legal representative;

105 CLAIMS FOR BENEFITS (Continued)

105.1 (Continued)

- (d) In the case of incompetents, the time does not begin to run until a legal representative is appointed;
- (e) Where exceptional circumstances justify the filing of a claim; and
- (f) A disability claim for injury timely filed will satisfy notice requirements for a death claim in the event that the injury results in death.

105.2 The Division shall forward by first class mail or deliver in person the appropriate, initially completed claim or request form to the individual for review, revision, and execution.

105.3 The Division shall enclose the approved certificate form for execution by the employee's physician, except in cases of death.

105.4 The executed form shall be returned to the Division within the time period specified by §2322 of the Act or within fifteen (15) days of the date which it was mailed or delivered to the employee, whichever is later.

105.5 No claim shall be deemed to have been filed until the executed form has been received by the Division.

106 REQUEST FOR HEARING

106.1 In accordance with the §2324 of the Act, the Division shall notify the individual claiming benefits, in writing, of its determination upon the claim submitted and its findings of fact upon which the determination is based as soon as practicable.

106.2 A form for requesting a hearing pursuant to §2324(b) of the Act shall accompany the notice of determination.

106.3 If the individual claiming benefits under the Act wishes to request a hearing pursuant to §2324(b) of the Act, that individual shall sign the request for hearing which was forwarded to him or her pursuant to §106.1 of this Chapter and return it to the office designated on that form within thirty (30) days of the issuance of the determination.

107 HEARING PROCEDURES

107.1 Hearings pursuant to §2324(b) of the Act shall be conducted by a hearing officer who has been duly designated by the Mayor.

107 HEARING PROCEDURES (Continued)

- 107.2 The hearing officer shall set the time and place of the hearing, and shall mail or deliver in person written notices to the claimant at least ten (10) days prior to the hearing.
- 107.3 The hearing shall, when practicable, be set at a time and place convenient for the claimant.
- 107.4 The hearing officer may, and when so requested by the claimant shall, afford the claimant a prehearing conference to clarify the issues in his or her claim and, when necessary, shall postpone the hearing for this purpose.
- 107.5 A hearing may be postponed or cancelled upon the oral or written request of the claimant if the request is received by the hearing officer assigned to conduct the hearing at least forty-eight (48) hours prior to the time of the hearing or at the option of the hearing officer.
- 107.6 In conducting a hearing, evidence may be presented orally or in the form of written statements and exhibits.
- 107.7 All evidence available to the claimant on the date of the hearing shall be presented to the hearing officer at the time of the hearing.
- 107.8 The hearing officer, in his or her discretion, may leave the record open for a reasonable period subsequent to the hearing to receive any available evidence prior to making a recommendation to the Deputy Director.
- 107.9 The hearing shall be recorded, and if transcribed, the original of the complete transcript shall be made a part of the claims record. Upon request, a copy of the complete transcript shall be provided to all interested parties at cost as established by the Division.
- 107.10 If the claimant fails to appear at the time and place set for the hearing and does not, within ten (10) days after the time set for the hearing, show good cause for the failure to appear, the official claims record shall be closed.
- 107.11 The hearing officer shall then make a recommendation to the Deputy Director to reverse, modify, affirm, or remand a determination rendered by the claims examiner.
- 107.12 The Deputy director shall administratively review the case file and the hearing officer's recommendation before certifying and issuing the final determination on the claim.
- 107.13 The hearing officer shall fix the time within which he or she will receive evidence to reflect findings of fact and conclusions of law.

107 HEARING PROCEDURES (Continued)

- 107.14 The hearing officer shall make a recommendation to the Deputy Director who shall render the final decision outlining the reasons and basis on which the decision was made.
- 107.15 The final decision shall be rendered within thirty (30) days after the hearing ends or the record closes, and then mailed or delivered to the claimant at the last known address.
- 107.16 The final decision shall put the claimant on notice of his or her right to file an appeal, from the Deputy Director's final decision, to the Employees' Compensation Appeals Board.

108 REPRESENTATION

- 108.1 Any claimant who wishes to be represented in any proceeding for determination of a claim under the Act shall submit a written appointment of the individual who he or she is authorizing to undertake the representation to the Division or shall make the appointment on the record at a hearing.
- 108.2 A duly appointed representative may make or give, on behalf of the claimant he or she represents, any request or notice relative to any proceeding before the Division under the Act, including formal hearing and review.
- 108.3 A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the claimant he or she represents and to obtain information with respect to the claim of the claimant.
- 108.4 Notice to any claimant of any administrative action, determination, or decision or request to any party for the production of evidence shall be sent to the representative of the claimant, and the notice or request shall have the same force and effect as if it had been sent to the claimant.

109 CLAIMS FOR FEES FOR REPRESENTATION

- 109.1 Claims for fees for representation of a claimant shall be submitted in writing to the Division or to the hearing officer, if a hearing had been requested, within thirty (30) days of the issuance of a determination under §106.1 or of a tentative decision under §107.9 and §107.10 of this chapter.
- 109.2 A copy of the claim shall be simultaneously forwarded by the representative to the claimant who was represented.

109**CLAIMS FOR FEES FOR REPRESENTATION (Continued)**

- 109.3 All claims shall include an itemized statement describing the services rendered. The itemization shall contain at least the following information:
- (a) The dates that services began and ended and all dates on which conferences were held, documents or letters prepared, telephone calls made, etc.;
 - (b) A description of each service rendered with the amount of time spent on each type of service;
 - (c) The amount of the fee which the representative desires for services performed;
 - (d) The amount of fees requested, charged, or received for services rendered on behalf of the claimant before any State or Federal court or agency, in a similar or related matter; and
 - (e) A statement explaining the basis for the amount of the fee requested.
- 109.4 No claim shall be approved by the Division or hearing officer pursuant to §2327(b) of the Act unless the representative submitting the claim was duly appointed by the claimant in accordance with §108.1 of this chapter.
- 109.5 In determining whether to approve a claim, the Division or hearing officer shall consider at least the following factors:
- (a) The nature and complexity of the claim;
 - (b) The actual time spent on development and presentation of the claim;
 - (c) The amount of compensation accrued and potential future payments;
 - (d) Customary local charges for similar services; and
 - (e) Professional qualifications of the representative.
- 109.6 The decision approving or disapproving a claim shall be forwarded to the representative and to the claimant who was represented.

110 DELIVERY OF COMPENSATION

- 110.1 No payments of compensation shall be delivered to an individual who was appointed to represent the claimant entitled to that payment.
- 110.2 A payment of compensation shall not be delivered to any person other than the claimant entitled to that payment or that claimant's legal guardian unless the claimant has submitted a request in writing that the payment be delivered to another specified person and which is not in violation of §2330 or any provision of the Act.

111 ORDERS FOR PHYSICAL EXAMINATION

- 111.1 In accordance with §2323(a) of the Act, the Division may issue an order, in writing, directing any employee who is seeking or has been awarded compensation to submit to a medical examination.
- 111.2 Any claim or expenses incident to an examination shall be submitted and processed in the same manner provided by this chapter for any other claims for compensation.
- 111.3 The Division may require updated information or additional medical examinations to award further compensation.

112 INCREASES, DECREASES, SUSPENSION, OR FORFEITURE OF AWARDS

- 112.1 Any individual who has requested a review of an award pursuant to §2328 of the Act shall be notified of the determination of the Appeals Board resulting from that review in the same manner specified by §105.2 to §105.5 of this chapter for notification of determinations upon claims or requests for benefits.
- 112.2 If the Division increases, decreases, suspends, or declares a forfeiture of an award of compensation pursuant to §§2306, 2313, 2323 or 2329 of the Act, it shall immediately notify the beneficiary of that award of that action in the same manner specified by §§105.2 to §105.5 of this chapter for notification of determinations upon claims or requests for benefits.
- 112.3 Any beneficiary whose award has been increased, decreased, suspended or forfeited may request a hearing for determination and appeal and may appeal the determination to the Employees' Compensation Appeal Board in accordance with the Act and regulations promulgated pursuant to the Act.

113 REPORT OF EARNINGS

- 113.1 In accordance with §2306(b) of the Act, the Division may require a partially disabled claimant to file with it a report of the employee's earnings by notifying the employee in writing that a report is required.
- 113.2 Reports of earnings may be required of a claimant whenever the Division, in its discretion, determines that a report is needed.
- 113.3 Reports shall be required to be filed with the Division within fifteen (15) days of the date of notification of the request.

114 SUBROGATION

- 114.1 Whenever the Division believes that a person or entity other than the District of Columbia Government may be legally liable for the injury or death for which benefits are payable, it shall forward a form to the beneficiary for assignment of the beneficiary's rights to the District of Columbia in accordance with §2331 of the Act.

115 ELECTION OF COMPENSATION

- 115.1 Whenever the Division determines that a beneficiary may be entitled to other benefits such as those described in §2316(b) of the Act, it shall forward to the beneficiary a form for the election of which compensation the beneficiary wishes to receive.

116 NOTICE OF RETURN TO WORK

- 116.1 In all cases reported to the Division, the official superior shall be required to notify the Division immediately when the injured employee returns to work or when the disability ceases.
- 116.2 The official superior shall notify the Division if, after the employee returns to work, the same injury causes the employee to stop work again.

117 SCHEDULED AWARDS

- 117.1 In accordance with §2307(c) of the Act, the following specified internal and external organs are added to the compensation schedule:

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| (a) Breast | (one) | 52 weeks; |
| (b) Kidney | (one) | 152 weeks; |

117 SCHEDULED AWARDS (Continued)

117.1 (Continued)

- (c) Larynx 160 weeks;
- (d) Lung (one) 156 weeks;
- (e) Penis 205 weeks;
- (f) Testicle (one) 52 weeks; and
- (g) Tongue 160 weeks.

118 EMPLOYEES' COMPENSATION APPEALS BOARD

118.1 In accordance with §2344 of the Act, the Employee's Compensation Board shall be comprised of three (3) individuals appointed by the Mayor.

118.2 The Board shall have the authority to hear all cases on appeal with respect to determinations and awards of employees' claims, and render final administrative decisions.

199 DEFINITIONS

199.1 The definitions set forth in §2301 of Title 23 (Disability Compensation) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply and have the meaning ascribed:

Act - the District of Columbia Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139), Title 23, as amended and as it may be hereafter amended.

Beneficiary - an individual who is entitled to receive benefits under the Act.

Claim - an assertion properly filed and otherwise made in accordance with the provisions of this chapter that an individual is entitled to benefits under the Act.

Claimant - an individual who files a claim for entitlement from the Division for benefits under the Act or who is receiving those benefits.

199 DEFINITIONS (Continued)

199.1 (Continued)

Division - the Public Sector Division of the Office of Workers' Compensation, Department of Employment Services, District of Columbia Government.

Employment Agency - the agency or instrumentality of the District of Columbia Government which employs an individual who is defined as an employee by the Act.

Official Superior - officers and employees having responsibility for the supervision, direction or control of employees.

Mayor - the Mayor of the District of Columbia or a person designated to perform his or her function under the Act.

